

ESTTA Tracking number: **ESTTA158299**

Filing date: **08/22/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Ascencia Bank, Inc.
Granted to Date of previous extension	08/22/2007
Address	8620 Biggin Hill Lane Louisville, KY 40220 UNITED STATES
Attorney information	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES sjohnston@merchantgould.com, slindemeier@merchantgould.com Phone:(612) 332-5300

Applicant Information

Application No	78938805	Publication date	04/24/2007
Opposition Filing Date	08/22/2007	Opposition Period Ends	08/22/2007
Applicant	Ascentia Capital Partners, LLC Suite B 9408 Double R. Blvd. Reno, NV 89521 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. First Use: 2005/06/15 First Use In Commerce: 2005/12/01
All goods and services in the class are opposed, namely: investment advisory services, namely, portfolio management, hedge fund investments and separately managed accounts

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2751198	Application Date	02/14/2002
Registration Date	08/12/2003	Foreign Priority Date	NONE
Word Mark	ASCENCIA BANK		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 2002/08/01 First Use In Commerce: 2002/08/01 BANKING SERVICES

Attachments	76371221#TMSN.gif (1 page)(bytes) 2007 08 22 Notice of Opposition 78938805 ASCENTIA.PDF (4 pages)(104301 bytes)
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Signature	/SWJ/
Name	Scott W. Johnston
Date	08/22/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Ascencia Bank, Inc.)	Opposition No. _____
)	
)	Mark: ASCENTIA
Opposer)	
)	Serial No. 78/938,805
v.)	
)	Filing Date: November 5, 2004
Preferred One, Inc.)	
)	Published: June 6, 2006
Applicant.)	
)	

NOTICE OF OPPOSITION

Ascencia Bank, Inc., a Kentucky corporation having its principal place of business at 8620 Biggin Hill Lane, Louisville, Kentucky 40220 (hereinafter referred to as "Opposer"), believes that it will be damaged by the registration of the mark ASCENTIA shown in application Serial No. 78/938,805, filed July 27, 2006, by Ascentia Capital Partners, LLC (hereinafter referred to as "Applicant"), and hereby opposes registration of the mark. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of the mark ASCENTIA for "investment advisory services, namely, portfolio management, hedge fund investments and separately managed accounts," in International Class 36.

2. Applicant's mark published for opposition on April 24, 2007. Opposer filed and the Board approved an extension of time to oppose Applicant's Mark until August 22, 2007. Accordingly, this Notice of Opposition is timely filed.

3. Opposer has adopted and is using the mark ASCENCIA BANK as its company name and the brand of its banking services. Opposer currently has customers in fifty (50) states utilizing the services it provides under its ASCENCIA BANK mark.

4. Opposer is the owner of Registration No. 2,751,198 for the mark ASCENCIA BANK for banking services. Registration No. 2,751,198 is valid, subsisting, and in full force and effect.

5. Opposer commenced use of its ASCENCIA BANK mark before Applicant adopted the ASCENTIA mark. Applicant's alleged use date of the ASCENTIA mark is June 15, 2005. Opposer's usage of the ASCENCIA BANK mark commenced at least as early as August, 2002.

6. There is no issue as to priority as between Applicant's ASCENTIA and Opposer's ASCENCIA BANK marks given that Opposer's ASCENCIA BANK mark was filed February 14, 2002, more than four (4) years before Applicant filed its ASCENTIA application, and registered August 12, 2003, over three (3) years before Applicant filed its ASCENTIA application.

7. Applicant's alleged services are closely related to Opposer's services.

8. Applicant's claimed ASCENTIA mark is highly similar in sight, sound, meaning and overall commercial impression to Opposer's ASCENCIA BANK mark because the terms ASCENTIA and ASCENCIA are essentially phonetic equivalents. Moreover, the terms ASCENCIA and ASCENTIA are virtually identical in sight and overall commercial impression. The term BANK in Opposer's mark identifies Opposer's services and, as such, consumers view the term ASCENCIA as the dominant portion of Opposer's mark.

9. Due to the similarity between Applicant's claimed mark, ASCENTIA, and Opposer's previously used and duly registered ASCENCIA BANK mark, and the closely related nature of the services of the respective parties, customers and potential customers are likely to

believe that Applicant's services originate from Opposer, or are otherwise endorsed, sponsored or approved by Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

10. The use and registration by Applicant of the mark ASCENTIA for Applicant's services is likely to cause confusion or to cause mistake and deception in the banking and financial field, and among consumers and potential consumers, with Opposer's previously used and duly registered ASCENCIA BANK mark, again resulting in damage to Opposer.

11. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

12. Registration of the mark shown in Application Serial No. 78/938,805 will result in damage to Opposer under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer requests that the registration sought by Applicant in application Serial No. 78/938,805 be refused and that this Notice of Opposition be sustained.

Please direct all correspondence to:

Scott W. Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910

Opposer herein appoints John A. Clifford, Reg. No. 30,247; Andrew S. Ehard; Gregory C. Golla; Ernest W. Grumbles III; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I. Mattessich; Christopher J. Schulte; and William D. Schultz, and all

other attorneys of the firm of Merchant & Gould P.C., as its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

ASCENCIA BANK, INC.

By its Attorneys,

Date: 8-22-07

A handwritten signature in black ink, appearing to read "S. Johnston", written over a horizontal line.

Scott W. Johnston
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